



A D V A N C I N G   E Q U A L I T Y

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**Statement of  
Karen K. Narasaki  
President and Executive Director, Asian American Justice Center**

**Before the  
Subcommittee on the Constitution  
Committee on the Judiciary  
United States House of Representatives**

**Legislative Hearing on H.R. 9,  
“A Bill to Reauthorize and Amend the Voting Rights Act of 1965: Part II”  
May 4, 2006**

**Introductory Statement**

Chairman Chabot, Ranking Member Nadler and distinguished members of the Subcommittee. My name is Karen K. Narasaki and I am the President and Executive Director of the Asian American Justice Center, formerly known as the National Asian Pacific American Legal Consortium. We are a national non-profit, non-partisan organization that works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation.

We have three affiliates: the Asian American Institute in Chicago, the Asian Law Caucus in San Francisco and the Asian Pacific American Legal Center in Los Angeles, all of who have been engaged in working with their communities to ensure compliance with the Voting Rights Act. We also have over 100 community partners serving their communities in 24 states and the District of Columbia.

Together with our Affiliates and our community partners, we have been extensively involved in improving the current level of political and civic engagement among Asian American communities and increasing Asian American access to the voting process. One of our top priorities is the reauthorization of the Voting Rights Act (VRA) because of the incredible impact the VRA has had on the Asian American community in addressing discriminatory barriers to meaningful voter participation.

To that end, I am pleased to appear before you on behalf of AAJC today to provide comments on HR. 9, the “Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.” AAJC commends the bipartisan, bicameral support shown by the House Judiciary Committee and Senate Judiciary Committee for renewing key expiring provisions of the VRA. In particular, AAJC appreciates the extensive hearings held by the House Judiciary Subcommittee on the Constitution and the support shown by leadership toward this matter. I would like to request that my written statement be formally entered into the hearing record.

## **History of the Voting Rights Act and Asian Americans**

Voting is the most important tool Americans have to influence government policies that affect every aspect of their lives – from taxes, to education, to health care. In short, voting is power.

Voting is also the foundation of our democracy, and the right to vote is a fundamental American right. However, large numbers of Americans have been denied the right to vote throughout our nation's history. For example, until 1965, African Americans in the South were systematically and violently denied the right to vote.

During that same time, Asian American voters were also denied the opportunity to exercise the right to vote. Beginning in 1790, Asian Americans were considered “aliens ineligible for citizenship.” In 1870, Chinese Americans were expressly prohibited from naturalizing as citizens. By 1924, this prohibition was extended to virtually all Asian immigrants (except Filipinos), denying them the right to vote. By 1935, Filipinos were also restricted in their ability to vote.

It wasn't until the last fifty years that the last of these restrictions ended, at long last giving all Asian Americans the right to vote. However, even after all Asian Americans were finally granted the right to vote, they faced another obstacle to voting – language barriers. Citizens not fluent in English were often denied needed assistance at the polls.

The VRA was enacted in response to this long history of discrimination. The critical moment leading to the VRA's passage occurred in March 1965. On a bridge outside Selma, Alabama, state troopers assaulted hundreds of people who were peacefully marching for voting rights for African Americans.

The VRA is designed to combat voting discrimination and to break down language barriers to ensure that Asian Americans and other Americans can vote. Asian Americans have long suffered discrimination at the polls, and still do today. Additionally, Asian American citizens still face language barriers when attempting to vote. Asian American citizens who speak some English but are not fluent can have difficulty understanding complex voting materials and procedures. By providing Asian American citizens with equal access to voting and helping to combat voting discrimination, the VRA gives Asian American citizens power to influence the policies that impact their community.

Since the VRA was enacted over 40 years ago, and since the adoption of Section 203 in 1975, Asian Americans have made substantial gains in electoral representation, although Asian American elected officials are still underrepresented in government. The VRA, and the language assistance provided by Section 203 in particular, has played a critical role in many of these gains.<sup>1</sup> Studies show a sharp rise in the number of Asian American elected officials in federal, state, and local offices. In 2004 the total number was 346, up from 120 in 1978. Of the 346 total elected officials, 260 serve at the local level, up from 52 in 1978.<sup>2</sup> Approximately 75 Asian American officials serve at the state legislative level. In California, the increase has been particularly dramatic. In 1990, California had no Asian American state legislators; it now has nine. These gains can be directly attributed to the VRA

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<sup>1</sup> States that contain at least one county required to provide voting assistance in one or more Asian languages pursuant to Section 203 include Alaska, California, Hawaii, Illinois, New York, Texas, and Washington.

<sup>2</sup> Carol Hardy-Fanta, Christine Marie Sierra, Pei-te Lien, Dianne M. Pinderhughes, and Wartyna L. Davis, *Race, Gender and Descriptive Representation: An Exploratory View of Multicultural Elected Leadership in the United States*, September 4, 2005, at 4.

<sup>3</sup> *Id.* at 17.

and particularly to the passage of Section 203. For example, the vast majority of Asian American elected officials, 75%, were elected in jurisdictions covered by Section 203 of the VRA.<sup>3</sup> In the state legislatures, 65% of Asian Americans were elected from jurisdictions covered by the VRA.<sup>4</sup> In city councils, 79% of Asian Americans were elected from VRA-covered jurisdictions.<sup>5</sup> And among those serving on the school boards, 84% of Asian Americans were elected from covered jurisdictions.

In California, eight of the nine Asian American state legislators represent legislative districts located in counties that are covered under Section 203 for at least one Asian language.<sup>6</sup> Every county in California that is covered under Section 203 for an Asian language has at least one Asian American legislator.

Harris County, Texas provides another example of gains in electoral representation that are directly attributable to the 1992 amendment to Section 203. In July 2002, the Census Bureau determined that Harris County qualified for Section 203 coverage in Vietnamese (in addition to Spanish). In 2003, Harris County election officials violated Section 203 by failing to provide Vietnamese ballots on its electronic voting machines. Harris County attempted to remedy the problem by creating paper ballot templates in Vietnamese. However, the County did not make these templates widely available to voters and did not offer them to voters at all polling places.

Pressure by the Department of Justice, AAJC, and our Community Partner, the Asian American Legal Center of Texas, resulted in a settlement agreement that addressed the County's violations. Specifically, the County agreed to (1) hire an individual to coordinate the County's Vietnamese language election program; (2) provide all voter registration and election information and materials, including the voting machine ballot, in Vietnamese, as well as English and Spanish; (3) establish a broad-based election advisory group to make recommendations and assist in election publicity, voter education, and other aspects of the language program; and (4) train poll officials in election procedures and applicable federal voting rights law. In the wake of these changes, Harris County elected its first Vietnamese state legislator, Hubert Vo, in November 2004 over an incumbent.<sup>7</sup>

Despite these tremendous gains, barriers precluding Asian Americans from electing candidates of their choice still exist. This progress is at risk of being subverted without the renewal of the VRA, including Section 203. There is still much work to do before Asian Americans can exercise their right to vote without encountering obstacles related to their lack of fluency in English and without encountering discrimination at the polls. To that end, AAJC believes HR. 9 will help ensure the continued success of Asian American voters having their voices heard and help more Asian Americans to vote.

### **Continuing Discrimination Against Asian American Voters**

Although the VRA has done a tremendous amount to assist language minorities in exercising their right to vote, discrimination against Asian American voters and candidates persists, and the need for the protections provided by the VRA remains.

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 17–18.

<sup>6</sup> These legislators are California State Assemblymembers Judy Chu (Los Angeles), Carol Liu (Los Angeles), Ted Lieu (Los Angeles), Van Tran (Orange), Shirley Horton (San Diego), Wilma Chan (Alameda), Alberto Torrico (Alameda, Santa Clara), and Leland Yee (San Francisco, San Mateo).

<sup>7</sup> Article available at [http://www.civilrights.org/campaigns/vra/learn\\_more/detail.cfm?d=195](http://www.civilrights.org/campaigns/vra/learn_more/detail.cfm?d=195).

For example, on April 25, 2005, Trenton, New Jersey radio hosts denigrated Asian Americans by using racial slurs and speaking in mock Asian gibberish during an on-air radio show. The hosts demeaned a Korean American mayoral candidate and made various other derogatory remarks. One of the hosts, Craig Carton, made the following remarks:

Would you really vote for someone named Jun Choi [said in fast-paced, high-pitched, squeaky voice]? ... And here's the bottom line. ... no specific minority group or foreign group should ever dictate the outcome of an American election. I don't care if the Chinese population in Edison has quadrupled in the last year, Chinese, should never dictate the outcome of an election, Americans should... And it's offensive to me... not that I have anything against uh Asians... I really don't... I don't like the fact that they crowd the goddamn black jack tables in Atlantic City with their little chain smoking and little pocket protectors.<sup>8</sup>

Several days after the broadcast, the New Jersey/National Taskforce Against Hate Media and the New Jersey Coalition for Asian American Civil Rights reached an agreement with the radio station, which provided that the hosts would issue an on-air apology and the station would implement specific strategies to promote cultural awareness.<sup>9</sup> Jun Choi eventually won the election.

The discriminatory attitudes expressed by the hosts in Trenton are by no means unique. In 2005 in Washington State, a citizen named Martin Ringhofer challenged the right to vote of more than one thousand people with foreign-sounding names. Mr. Ringhofer targeted voters with names that “have no basis in the English language” and “appear to be from outside the United States” while eliminating from his challenge voters with names “that clearly sounded American-born, like John Smith, or Powell.”<sup>10</sup> Mr. Ringhofer primarily targeted Asian and Hispanic voters.<sup>11</sup> In one of the counties in which Mr. Ringhofer initiated his challenge, the county auditor declined to process the challenge and contacted the Department of Justice about the challenge due to its apparent violation of state and federal law.<sup>12</sup>

Through poll monitoring efforts, several organizations have documented evidence of discrimination by poll workers at polling sites throughout the country. Under the Access to Democracy Project, AAJC and its affiliates monitored polls during the November 2004 election and found significant evidence of poll worker reluctance to implement Section 203 properly, as well as outright hostility towards Asian American voters. For example, one election judge in Cook County, Illinois, commented that a voter whom he was unable to understand should “learn to speak English.” Similarly, in a precinct in Cook County, with a very high concentration of Chinese American voters, there was only one Chinese ballot booth and no sign indicating that the booth was for Chinese speakers. When asked about this concern, the election judge replied, “They don't need them anyway. They just use a piece of paper and punch numbers. They don't read the names anyway, so it doesn't matter.”

During the 2004 election, “Election Protection” coalition members monitored polls by documenting calls from voters across the United States complaining of discriminatory practices at the

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<sup>8</sup> <http://www.asianmediawatch.net/jerseyguys/>.

<sup>9</sup> *Id.*

<sup>10</sup> See also Jim Camden, *Man says votes from illegal immigrants*, March 31, 2005, available at <http://www.spokesmanreview.com/local/story.asp?ID=61944>.

<sup>11</sup> *Id.*

<sup>12</sup> Letter dated April 5, 2005 from Franklin County Auditor to Martin Ringhofer.

polls. For example, in Orange County, California, an Asian American voter was unnecessarily required to show proof of identification and address even though she was not a first time voter and had voted in the precinct previously. This also occurred in Bergen County, New Jersey.<sup>13</sup>

Similarly, in Boulder, Colorado, a poll worker made racist comments to an Asian American voter, told her she was not on the list of registered voters, and then turned her away after she had waited in line for over an hour. The voter watched as others completed provisional ballots, and she asked if she could do so as well, only to be told her circumstances were different. The voter continued to watch as another Asian American woman was also turned away. After the voter left the polling place, she called the Election Protection hotline and discovered that she indeed was properly registered to vote at that location. She returned and eventually was allowed to vote.<sup>14</sup>

Other examples of discriminatory behavior at the polls included:

- In West Palm Beach, Florida, an election poll worker told a voter that the city was not handling Hispanic, Black or Asian voters at that particular polling place.<sup>15</sup>
- In Union County, New Jersey, White challengers were seen going inside the voting booth with minority voters.<sup>16</sup>
- In Jackson Heights, Queens, one poll worker said, “You Oriental guys are taking too long to vote.” Other poll workers commented that there were too many language assistance materials on the tables, saying, “If they (Asian American voters) need it, they can ask for it.” At another site in Queens, when a poll worker was asked about the availability of translated materials, he replied, “What, are we in China? It’s ridiculous.”<sup>17</sup>

AAJC commends leadership for recognizing the continuing discrimination faced by minority voters, including Asian Americans, and for reauthorizing and restoring the VRA, including Sections 5 and 203, for 25 more years as a congruent and proportional exercise of its powers.

## **Section 5**

AAJC is supportive of HR. 9’s renewal for 25 years and restoration of Section 5 of the VRA. We commend leadership for restoring the strength of Section 5 by addressing two Supreme Court decisions that have significantly narrowed Section 5’s effectiveness. HR. 9 rejects the Court’s holding in *Bossier II* by making clear that a voting rule change motivated by any discriminatory purpose cannot be precleared. HR. 9 also partly rejects the Court’s decision in *Georgia v. Ashcroft*, by restoring the pre-*Georgia v. Ashcroft* standard to protect the minority community’s ability to elect their preferred candidates of choice. The renewal and restoration of Section 5 is important to the Asian American community.

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<sup>13</sup> *Election Incident Reporting System: 1-866-Our-Vote*, available at <https://voteprotect.org/index/php?display=EIRMapNation&tab=ED04>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> Asian American Legal Defense & Education Fund, *Asian American Access to Democracy in the 2004 Election: Local Compliance with the Voting Rights Act and Help America Vote Act (HAVA) in NY, NJ, MA, RI, MI, PA, VA*, August 2005.



Section 5 applies to numerous voting changes in covered jurisdictions, including redistricting, annexation of other territories or political subdivisions, and polling place changes, which can have an immense impact on local politics in particular and on Asian American communities' ability to participate in the process. In jurisdictions that are covered by both Sections 5 and 203, Section 5 complements the enforcement of Section 203. Jurisdictions that are covered by both Sections 5 and 203 must obtain preclearance from the Justice Department before implementing any change in a language assistance program. For example, when the New York City Board of Elections refused to provide fully translated machine ballots, the Justice Department, acting pursuant to Section 5, compelled the Board to comply with Section 203 by providing machine ballots with all names transliterated into Chinese.<sup>18</sup>

As the Asian American community continues to grow and move, Section 5 will become more and more relevant to Asian Americans. Asian Americans are one of the fastest growing populations in America.<sup>19</sup> Large numbers of Asian Americans continue to live in California, New York, and Hawaii.<sup>20</sup> However, Asian Americans are simultaneously moving to different areas of the United States, including the South. Georgia and North Carolina are among the three fastest growing Asian American populations.<sup>21</sup> In fact, five of the states covered in their entirety and another four states covered partially by Section 5 are among the top 20 states with the fastest growing Asian American populations. The remaining covered states all experienced a growth in their Asian American populations.<sup>22</sup>

With this demographic shift, we are seeing the continued need for Section 5 coverage to help combat voting discrimination against Asian Americans in Section 5 covered jurisdictions. For example, Bayou La Batre, Alabama, is a fishing village of about 2,750 residents, about one-third of who are Asian Americans. In the 2004 primary elections, an Asian American candidate ran for City Council. In a concerted effort to intimidate supporters of this candidate, supporters of a white incumbent challenged Asian American voters at the polls. The challenges, which are permitted under state law, included complaints that the voters were not U.S. citizens or city residents, or that they had felony convictions. The challenged voters had to complete a paper ballot and have that ballot vouched for by a registered voter. The Department of Justice investigated the allegations and found them to be racially motivated. As a result, the challengers were prohibited from interfering in the general election, and ultimately the town, for the first time, elected an Asian American to the City Council.<sup>23</sup>

Section 5 is also important to the Asian American community because of the distinct and unique voice of the community, which sometimes favors different candidates than White voters. There have been several examples of differences in voting patterns between Asian American and White voters:

- The 2003 gubernatorial election in Louisiana suggests that racial issues remain salient in Section 5 covered jurisdictions. Pre-election polls in the weeks prior to the November runoff showed now-Representative Bobby Jindal, an Indian American

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<sup>18</sup> Editorial, *Minority Rights in the Voting Booth*, New York Times, Aug. 19, 1994, available at <http://select.nytimes.com/search/restricted/article?res=F60910FB3D5DOC7A8DDDA10894DC494D81>.

<sup>19</sup> <http://www.census.gov/Press-Release/www/releases/archives/race/001839.html>.

<sup>20</sup> [http://www.advancingequality.org/files/census\\_handbook.pdf](http://www.advancingequality.org/files/census_handbook.pdf) – Summary – p.i.

<sup>21</sup> [http://www.advancingequality.org/files/census\\_handbook.pdf](http://www.advancingequality.org/files/census_handbook.pdf) – Table 9 – p. 10.

<sup>22</sup> *Id.*

<sup>23</sup> DeWayne Wickham, *Why renew Voting Rights Act? Ala. town provides answer*, USA Today, Feb. 22, 2006, available at [http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act\\_x.htm](http://www.usatoday.com/news/opinion/editorials/2006-02-22-forum-voting-act_x.htm).

Republican supported by George W. Bush and Governor Mike Foster, with a comfortable lead over Caucasian Democratic Lt. Gov. Kathleen Blanco. But on Election Day, Jindal lost to Blanco by the margin of 52% to 48%. Analysis done on the race showed that a significant number of those who voted for David Duke, the former leader of the Ku Klux Klan, swung their support away from the non-white Republican, Jindal, to the white Democrat, Blanco.<sup>24</sup>

- In the 1998 U.S. Congressional 39<sup>th</sup> District race in California, Cecy Groom (a Filipino American Democrat) ran against Ed Royce. While almost 57% of Asian Americans voted for Groom, over 61% of White voters supported Royce.<sup>25</sup>
- In the 1998 race for California State Assembly District 60, in which Bob Pacheco ran against Ben Wong, 61% of Asian Americans voted for Wong, but only 23% of White voters did so.<sup>26</sup>
- In the 1998 race for California State Assembly District 68, in which Ken Maddox ran against Mike Matsuda, 68% of Asian American Pacific Islanders voted for Matsuda; most White voters supported Maddox (56%).<sup>27</sup>
- The City of Westminster, California, is home to the largest Vietnamese community outside of Vietnam. In the 1998 Westminster mayoral race, five candidates ran for the position of Westminster Mayor, including a Vietnamese American, Chuyen Nguyen. While Asian American voters surveyed overwhelmingly supported him, White voters tended to support Joy Neugebauer and eventual winner Frank Fry. In the highly contested Westminster City Council race, eight candidates, including three Asian Americans, ran for two seats. Despite overwhelming support from Asian American voters, the Asian American candidates lost to White candidates who were opposed by the Asian American community.<sup>28</sup>

Even in elections where no Asian American candidate is involved, Asian American voters still tend to vote differently than White voters. According to a Los Angeles Times election 2004 exit poll, 34% of Asian American voters voted for Bush, whereas 64% voted for Kerry. White voters, on the other hand, voted 57% for Bush and 42% for Kerry.<sup>29</sup> A November 2002 Southern California Voter Survey found that, in the 2002 gubernatorial vote, 61% of Asian Americans voted for Gray Davis, while only 38% of White voters voted for him.<sup>30</sup> According to a November 2000 Los Angeles Times exit poll, Asian American voters voted 62% for Gore and 37% for Bush. White voters, on the other hand, voted 43% for Gore and 54% for Bush.<sup>31</sup>

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<sup>24</sup> Richard Skinner and Philip A. Klinkner (2004) "Black, White, Brown and Cajun: The Racial Dynamics of the 2003 Louisiana Gubernatorial Election", Forum: Vol. 2: No. 1, Article 3.

<sup>25</sup> Asian Pacific American Legal Center, November 1998 Southern California Voter Survey Report (1999), available at [http://www.apalc.org/Nov\\_1998\\_Voter\\_Survey.pdf](http://www.apalc.org/Nov_1998_Voter_Survey.pdf).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> L.A. Times 2004 Exit Poll, available at [www.pollingreport.com/2004.htm](http://www.pollingreport.com/2004.htm).

<sup>30</sup> Asian Pacific American Legal Center, Data on Asian Pacific Islander Voters From the November 2002 Southern California Voter Survey, Nov. 7, 2002, available at [http://www.apalc.org/2002\\_voter\\_survey.pdf](http://www.apalc.org/2002_voter_survey.pdf).

<sup>31</sup> L.A. Times 2004 Exit Poll, available at [www.pollingreport.com/2000.htm](http://www.pollingreport.com/2000.htm).

Asian American voters also vote differently than White voters on ballot initiatives that directly impact the Asian American community.<sup>32</sup> For example, 53% of Asian American voters voted against Proposition 187, a 1994 initiative in California to ban illegal immigrants from public social services, non-emergency health care, and public education. By contrast, 63% of White voters voted for the initiative. Similarly, 61% of Asian American voters voted against California's Proposition 209, a 1996 initiative that bans affirmative action in the state; by contrast, 63% of White voters voted for the initiative.

### **Section 203**

AAJC commends the leadership for extending the language assistance provision, Section 203 of the VRA, another 25 years in HR. 9. AAJC also commends leadership for recognizing that the previous method of Section 203 determinations based upon data from the decennial census long form cannot keep pace with the ever-growing and changing population and have provided for determinations to be made based upon the annual American Community Survey on a five-year basis. Because the growth rate and the migration rate show that today's society is increasingly mobile, determinations made every five years will help to ensure that jurisdictions that need to be covered are and that jurisdictions that no longer need to be covered because they no longer have a sizeable language minority population with limited English proficiency will not be required to provide language assistance.

Section 203 has been critical to the advancement of Asian American voters. Despite the positive impact of the Voting Rights Act in general and Section 203 in particular, language minorities still face significant discrimination at the polls when attempting to exercise their right to vote. Discrimination at the polls can manifest in different ways, including hostile and unwelcoming environments at the polls and an outright denial of the right to vote. Section 203 remains necessary to remedy the problem of discrimination against Asian Americans at the polls.

Section 203 likewise remains necessary to help language minorities overcome another major barrier: the inability to speak or read English well. This is the single greatest hurdle that many language minorities must overcome in exercising their right to vote. Although many language minorities were born in this country or came here at a very young age, some have trouble speaking English fluently, often because they received a substandard education and were not taught English in school. Other language minorities immigrated to this country and have not had adequate opportunities to learn English.

Because the United States encourages people who have been here for a long time and who have been contributing to society to be civically engaged, certain persons are exempt from English literacy requirements when applying for citizenship, such as the elderly who have resided in the United States for a lengthy period of time, the physically or developmentally disabled, and certain Hmong veterans who helped to save American lives during the Vietnam War and came to the United States as refugees. Additionally, during the 1992 reauthorization of Section 203, Congress itself documented that the lack of English as a Second Language (ESL) programs effectively precludes language minorities from learning English. The waiting time for language minorities enrolling in ESL courses often can be more than one year. In Boston, the average waiting time can be as much as two years. In parts of New Jersey, the waiting time is six months to a year. Pennsylvania has reported waiting times as long as a

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<sup>32</sup> L.A. Times exit polls.



year.<sup>33</sup> Section 203 is a necessary remedy to overcome the language barrier, which prevents those who do not speak or read English fluently from fully exercising their right to vote.

According to the 2000 Census,<sup>34</sup> 40% of Asian Americans nationwide over the age of 18 have limited English proficiency, and 77% speak a language other than English in their homes. For certain Asian American groups, these numbers are well over the national averages. For example, 67% Vietnamese Americans over the age of 18 have limited English proficiency. For Laotians, Cambodians and Hmongs over the age of 18, over 60% have limited English proficiency.

Many Section 203 counties likewise have significant Asian American populations with limited English proficiency. For example, in King County, New York, 63% of Asian Americans 18 years and older have limited English proficiency. In several other Section 203 counties, including San Francisco County, Queens County and Kodiak Island Bureau, Alaska, over 50% of Asian Americans 18 years and older have limited English proficiency. The high rates of limited English proficiency among Asian American and other language minority voters make the language assistance provisions of Section 203 a critical protective measure against racial discrimination.

According to Attorney General Alberto Gonzales, Section 203 is a necessary remedy to address these disparities.

In the past two years, the Civil Rights Division has undertaken the most extensive enforcement of the minority language provisions in the history of the Voting Rights Act...The good news is we have evidence that our enforcement and compliance efforts are working.

For example, in San Diego County, voter registration among Hispanics and Filipinos rose by over 20 percent after one of our suits was filed. During that same period, Vietnamese registrations increased by 40 percent. And right here in Texas – in Harris County – the turnout among Vietnamese eligible voters doubled following the Justice Department’s efforts in that county.<sup>35</sup>

### Costs of Language Assistance

In a May 1997 study on the costs of Section 203, the General Accounting Office (GAO) surveyed all 422 jurisdictions and all 28 states covered by Section 203. For the respondents that provided cost data, the average cost for written assistance was only 14% of total costs, and the average cost of oral assistance was only 6.5% of total costs.

Notably, some officials responding to the GAO survey stated that they have provided assistance for so long that it is just part of their process, and they do not track costs separately. Some jurisdictions even demonstrated that it is possible to provide oral assistance at no or minimal cost. The GAO reported that other jurisdictions even provided assistance to groups for whom they were not required to offer assistance.

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<sup>33</sup> Center for Adult English Acquisition, available at <http://www.cal.org/caela>.

<sup>34</sup> The data cited below are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multi-race combined).

<sup>35</sup> Prepared Remarks of Attorney General Alberto R. Gonzales at the Anniversary of the Voting Rights Act, Lyndon B. Johnson Presidential Library Austin, Texas, Aug. 2, 2005.

Research from Dr. James Tucker, my esteemed co-panelist, confirms the GAO findings. Dr. Tucker's research found, among other things, that nearly 60% of reporting jurisdictions (91 of 154) reported incurring no additional costs for providing oral language assistance, and that nearly 55% of reporting jurisdictions (78 of 144) reported incurring no additional costs for providing written language assistance. This research also concluded that, after controlling for factors such as population size and classification of costs, the average percentage of total election costs attributable to language assistance is 2.9% for oral assistance and 7.6% for written assistance. As Dr. Tucker noted in his testimony, these averages are nearly equal to or below the original costs reported by GAO based on the 1984 elections and relied upon by Congress to extend Section 203 in 1992.

Opponents of the Voting Rights Act and Section 203 in particular continue to argue that providing language assistance to voters with limited English proficiency is prohibitively costly. The evidence presented in the GAO study and the recent research conducted by Dr. Tucker rebuts this contention. According to these reports, costs were minimal in most cases and certainly manageable.

### Constitutionality of Section 203

Section 203 is constitutional. The text of section 203 states that, in enacting this provision, Congress relied on its enforcement powers under the Fourteenth and Fifteenth Amendments to the United States Constitution.<sup>36</sup> Legislation that relies on Congress's enforcement powers under the Fourteenth and Fifteenth Amendments must be intended to address the type of discrimination proscribed by those Amendments. Where Congress addresses such harms, Congress has very broad legislative powers.

Congress's power under these Amendments, though, is not limitless. For legislation to remain within constitutional limits, the United States Supreme Court recently stated that the test is whether the legislation is "congruent" with and "proportional" to the improper discrimination that the statute addresses.<sup>37</sup> In *City of Boerne*, the Supreme Court identified three steps for determining whether a statute meets the "congruence and proportionality" standard: (1) identifying the constitutional protection at issue (discrimination); (2) reviewing the record to determine whether Congress responds to a widespread pattern of discrimination (congruence); and (3) determining whether Congress's response is reasonably proportional to the harm addressed (proportionality).

#### (1) First Prong: Identifying Discrimination Addressed By the Legislation

In the case of section 203, we need look no further than the language of the statute itself, which states that "citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them resulting in high illiteracy and low voting participation."<sup>38</sup>

The legislative history of section 203 confirms this. In enacting section 203, the Senate acted in response to racial discrimination in the voting process and education (and in other "facet[s] of life")

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<sup>36</sup> See 42 U.S.C. § 1973aa-1a(a) ("Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution, it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.").

<sup>37</sup> *City of Boerne v. Flores*, 521 U.S. 507, 519-20 (1997).

<sup>38</sup> 42 U.S.C. § 1973aa-1a(a).

that results in the disenfranchisement of language minorities.<sup>39</sup> In its 1982 report supporting reenactment of the temporary provisions of the Voting Rights Act, the Senate found, based on Supreme Court jurisprudence, that educational disparities are causally linked with depressed levels of political participation. Courts have recognized this linkage as well.<sup>40</sup>

## (ii) Second Prong: Congruence

After identifying the discrimination addressed by the legislation, the Court then looks at whether Congress, in enacting the statute, in fact is responding to the stated discrimination or is acting pursuant to some other motivation.<sup>41</sup> To evaluate Congress's intent, the Court looks to the legislative record, which must "identif[y] a history and pattern" of violations of the constitutional right at issue.<sup>42</sup> If the legislative record has glaring deficiencies, the statute will likely be struck down as unconstitutional.

The 1975 Senate Report supporting the enactment of section 203, and the 1992 House and Senate reports supporting the most recent extension of section 203, explicitly state, and set forth findings demonstrating, that the purpose of the statute was to address racial discrimination resulting in the disenfranchisement of language minorities.<sup>43</sup> The 1992 House Report supporting the 15-year extension of Section 203 states that the extension "is statutory acknowledgement of the continuing existence of the discrimination that led to the enactment of S[ection] 203."<sup>44</sup> The House found that educational disparities for certain language minority groups persisted and that these disparities had a direct and negative impact on those groups' ability to participate in the electoral process. The 1992 Senate Report reached the same conclusions.<sup>45</sup> Moreover, the record currently before the House demonstrates that the discrimination Congress intended to redress still exists.

## (iii) Third Prong: Proportionality

The Court finally compares the legislation at issue with the documented record of constitutional violations to determine whether the legislation is "so out of proportion to a supposed remedial or preventative object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior."<sup>46</sup> In evaluating proportionality, the Court has not enunciated any required factors to be examined. For example, the Court has not required that the legislation be "narrowly tailored" to remedying the identified discrimination. Instead, the latitude granted to Congress depends on the egregiousness and pervasiveness of the constitutional violations.

Section 203 is sufficiently proportional to the discrimination it seeks to address. The 1992 House and Senate had ample evidence to support the proposition that Section 203 is proportional to the very real problem of educational and voting discrimination. The 1992 House Report and the 1992 Senate Report both found that the remedial provisions of

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<sup>39</sup> S. Rep. 94-295, 1975 U.S.C.C.A.N. 774, 791-96 (July 22, 1975) ("1975 Senate Report").

<sup>40</sup> See, e.g., *White v. Regester*, 412 U.S. 755, 767-69 (1973) (citing both history of discrimination against minorities and educational and other socio-economic disparities between minorities and whites as factors in concluding that electoral systems violated the Fourteenth Amendment); *Kirksey v. Board of Supervisors*, 554 F.2d 139, 143-46 (5th Cir. 1977) (en banc) (inferring causal relationship between socio-economic disparities and depressed levels of political participation).

<sup>41</sup> *City of Boerne*, 521 U.S. at 531.

<sup>42</sup> *Garrett*, 531 U.S. at 368.

<sup>43</sup> 1975 Senate Report.

<sup>44</sup> H.R. Rep. 102-655, 1992 U.S.C.C.A.N. 766, 766 (July 8, 1992) ("1992 House Report").

<sup>45</sup> S. Rep. 102-315, 1992 WL 163390, at \*4-10 (July 2, 1992) ("1992 Senate Report").

<sup>46</sup> *Lane*, 541 U.S. at 533.

Section 203 had done much to cure these inequities. Specifically, statistics showed that, for the covered language minorities, “[Section] 203 has served as a catalyst for increased voter participation.”<sup>47</sup> Although there are no federal requirements that polling data be kept on the Asian American language minorities, then–recent exit polls conducted in Los Angeles and New York indicated that upwards of 80% of Asian American voters felt that language assistance materials would be “helpful” and likely would increase their participation in the electoral process.<sup>48</sup> The Report also noted that, in the decade preceding the renewal effort, continued voter discrimination was further evidenced by the fact that three of the four covered language minorities had brought many successful civil actions seeking to enforce the provisions of section 203.<sup>49</sup>

The congressional record developed thus far already has substantial evidence demonstrating that section 203 is proportional. The evidence in the record is broad-based, but boils down to two fundamental propositions. First, the evidence shows that language assistance has been successful in increasing voter participation and minority representation. Second, the evidence shows that language assistance still is needed because discrimination against Asian Americans continues to occur.

### **Strengthening Section 203**

AAJC recommends that the Subcommittee consider strengthen Section 203 by lowering the numerical threshold for coverage to 7,500 in HR. 9. Lowering the threshold from 10,000 to 7,500 would allow several Asian American language minority populations to benefit from language assistance under Section 203. These populations would likely not be covered after the next coverage determinations are made based on 2010 American Community Survey (ACS) census data – unless the threshold is lowered to 7,500. A lower threshold would result in minimal additional costs.

A lower numerical threshold will also remedy the potential that the ACS, which will replace the decennial census, will undercount language minorities. Unlike the decennial census long-form survey, the ACS will not be conducted in any Asian languages. Because 36% of the Asian American population has limited English proficiency, an English and Spanish-only ACS will likely result in an undercount of Asian American language minorities. Additionally, ACS forms are sent to only a small sample of the population, which means that few language minorities receive the form. This may result in the ACS collecting insufficient sample sizes for proper statistical analysis, further increasing the probability that the ACS will undercount Asian American language minorities. The likelihood of an undercount further justifies lowering Section 203’s numerical threshold to 7,500.

Nine additional Asian American populations in California, Illinois, New York, and Washington would currently be covered under Section 203 for Asian language assistance if a 7,500 threshold had been in effect when the 2002 determinations were made. All but one of those populations resides in counties that are already mandated to provide voting assistance in one or more Asian languages. Another six populations would have been covered for Spanish language assistance in Illinois, New Jersey, Ohio, Texas, Virginia and Wisconsin. Although several of these populations will have reached the 10,000 threshold by 2010, several other populations will not have reached the 10,000 threshold and will not be covered after the next coverage determinations are made – unless the threshold is lowered to 7,500.

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<sup>47</sup> 1992 U.S.C.C.A.N. at 770.

<sup>48</sup> *Id.* at 771.

<sup>49</sup> *Id.* at 772.

Importantly, lowering the threshold to 7,500 would trigger coverage for several Southeast Asian American communities. The current numerical benchmark has largely left out this significant portion of the Asian American community. Vietnamese Americans are covered by Section 203 in a few jurisdictions, but other Southeast Asian American language minority groups have not been covered thus far. The Southeast Asian American community largely consists of Americans from Cambodia, Laos and Vietnam. These communities clearly fall within the group of citizens Congress intended to protect and empower under Section 203 of the Voting Rights Act. Their characteristics include high levels of limited English proficiency and low levels of educational attainment, as well as low voter turnout.

For the Southeast Asian American community, educational attainment remains low, especially for the Cambodian, Laotian, and Hmong communities.<sup>50</sup> Census data show that over 25% of Cambodians, 45% of Hmong, and 23% of Laotians have had no formal schooling, compared to 1% of the overall population. Similarly, Census data shows that only 9% of Cambodians, 7% of Hmong, and 8% of Laotians obtain at least a bachelor's degree, compared to 24% of the overall U.S. population. The impact of these low rates of educational attainment on electoral participation is exacerbated by the fact that 32% of Cambodian households, 35% of Hmong households, and 32% of Laotian households are "linguistically isolated," which means that all members of the household 14 years old and over have at least some difficulty with English, as compared to 4% of households for the total U.S. population. Voters from linguistically isolated households are in particular need of Section 203 assistance because they do not have any family members who can accompany them to the polls and assist them in the voting process.

Three more Southeast Asian American communities would have been covered in the 2002 coverage determinations if the threshold had been 7,500 then, including the Cambodian American population in Los Angeles County. Section 203 coverage of this population alone would allow 17% of the nation's total Cambodian American population to benefit from language assistance; but if the threshold remains at 10,000 when the next coverage determinations are made in 2012, zero percent of the nation's Cambodian American population will benefit from language assistance. A lower threshold of 7,500 will also trigger coverage for two more Southeast Asian American communities that were not at 7,500 after the 2000 census, but will likely be after the 2010 census.

Section 203 currently covers several cities traditionally known for their significant Asian American populations, including Los Angeles, California's Bay Area region, New York, Chicago and Seattle. Section 203 coverage has also been triggered in cities with emerging Asian American populations, including Houston and San Diego. However, without a lower threshold, Section 203 will likely to continue to omit from its coverage other emerging Asian American populations in places such as Boston and Dallas. It is important for Congress to consider strengthening Section 203 so that it protects Asian American voters in these emerging population areas.

### **Observer & Examiner program**

AAJC agrees with HR. 9's elimination of federal examiners since examiners have not been appointed to jurisdictions certified for coverage in over twenty years. AAJC also supports the renewal of the observer coverage. However, AAJC recommends that the Subcommittee consider allowing the Attorney General under the federal observer provisions of the VRA to send federal observers to

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<sup>50</sup> The data cited below are taken from U.S. Census 2000, Summary Files 1 through 4. Figures are for the inclusive Asian American (but not Pacific Islander) population (single race and multi-race combined).



Section 203—covered jurisdictions where the Department of Justice learns of incidents of discrimination or interference with the right to vote in connection with upcoming or recent elections in HR. 9.

As Barry Weinberg, Former Deputy Chief and Acting Chief of the Voting Section at DOJ, testified to at a hearing by this Subcommittee, because violations of the Voting Rights Act continue to happen in polling places throughout the United States, the need for federal observers to document discriminatory treatment of racial and language minority voters in the polls has not waned. Mr. Weinberg further testified that minority language voters suffer additional discriminatory treatment when people who speak only English are assigned as polling place workers in areas populated by minority language voters. This fact is supported by years of community monitoring done by NGOs, including AAJC and its affiliates, which document complaints of widespread discrimination against language minorities across this country, such as:

- Challenges against Asian American voters at the polls alleging voters were not U.S. citizens or city residents, or that they had felony convictions because they looked “foreign” where voters were pulled from voting lines and forced to show passports or citizenship papers before they could vote.
- Poll workers treating Asian American voters with limited English proficiency disrespectfully, refusing to allow them to use an assistor of choice, and improperly influencing, coercing, and ignoring their ballot choices.
- Poll workers being hostile to Asian American voters and language assistance, or sometimes outright racist, refusing to allow them to vote or refusing to provide language assistance as mandated by law.

While federal observers have been sent to areas to monitor elections on behalf of language minority citizens, it has mostly been as a result of court orders because the Attorney General can only certify jurisdictions that are covered by Section 5. The only recourse DOJ has to monitor elections on behalf of language minorities is to send attorney monitors.

Federal observers have special access to polling places under the authority of the Voting Rights Act even where access to DOJ attorney monitors is otherwise barred by state laws. Because of their special access, the harassment of minority voters and other violations of the Voting Rights Act inside the polling places no longer go unseen and unchecked where federal observers are dispatched.

For language minorities, inside the polling site is precisely where they experience discrimination by poll workers who refuse to assist them, who degrade them, or who use racial slurs when speaking to them or by other voters who challenge their right to vote simply because they believe the Asian American voter looks “foreign.” If federal observers were allowed into Section 203—covered jurisdictions, they would be able to report these discriminatory and intimidating incidents to DOJ attorneys. As Mr. Weinberg testified, these facts are crucial and irreplaceable in the enforcement of the Voting Rights Act. Without the federal observers’ special access, DOJ attorneys are not able to collect evidence of discrimination unless harassed and intimidated voters take the proactive step of contacting the DOJ (assuming they even know they can pursue that course of action) and thus are not able to legally address the discrimination against language minority voters.

Finally, providing the Attorney General the authority to dispatch federal observers where incidents of discrimination and intimidation have been reported in Section 203–covered jurisdictions would not result in mandatory increases in the cost of the federal observer program. This modification would not mandate that the AG send federal observers to every new covered jurisdiction, rather simply where there has been evidence of voting discrimination. The reality is that this would simply provide the Attorney General more tools to combat voting discrimination.

### **Expert Witness Fees and Expenses**

AAJC commends leadership for authorizing the prevailing party to also recover expert costs as part of the attorney fees in voting rights cases. Because it is virtually impossible to prove a VRA violation without expending thousands of dollars for expert witness testimony, recoverable expert witness fees restores Congress' intent of assuring access to the courts by victims of voting discrimination.

### **Conclusion**

On behalf of AAJC, I want to thank the Committee for the opportunity to testify today on HR. 9 and its importance to the Asian American community. As this Committee knows, these provisions are essential to ensure meaningful and fair representation as well as equal voting rights for all Americans. The VRA helps remedy the continued discrimination experienced by Asian American voters. Because the expiring provisions are targeted to those areas with the most need, they are congruent and proportional to the discrimination experienced by minority voters. We are honored to be able to share our thoughts about the bill with the Committee. In particular, we are pleased to offer our support of HR. 9. I look forward to discussing the importance of the VRA to our nation and the debate around its reauthorization.